

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 583 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

GANGADHAR YASHVANT RAMEKAR

Versus

SURESHBHAIR NATHALAL PARIKH

Appearance:

1. Criminal Appeal No. 583 of 1990
MR MANISH UPADHYAY FOR MR PRANAV G DESAI for
Petitioner No. 1
MR AI PATHAN for MR BS PATEL for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR KT DAVE, A.P.P. for Respondent No. 3
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 05/02/2003

ORAL JUDGEMENT

1. The appellant - original complainant Gangadhar Yashvant Ramekar, Food Inspector of Baroda Municipal Corporation, has challenged in this Appeal the impugned Judgment and order of acquittal dated 25.8.1989 passed by the learned Judicial Magistrate, First Class (Municipal), Vadodara, in Criminal Case No.4816 of 1983 whereby the

learned Magistrate acquitted the respondents for the offences u/ss. 7(1) r/w Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short "The Act").

2. The learned Magistrate acquitted the respondents - accused on several grounds. One of the grounds was that sanctioned accorded by the Sanctioning Authority was defective. The order of acquittal passed by the learned Magistrate can be confirmed on all the grounds or any of the grounds assigned by the learned Magistrate in his impugned Judgment and order. In the instant case I am fully satisfied that there was total non-application of mind on the part of the Food Inspector as well as the Sanctioning Authority while according sanction. Therefore, the impugned order of acquittal is required to be confirmed only on this ground. Therefore, I do not propose to deal with any other grounds mentioned by the learned Magistrate in the impugned order of acquittal.

3. The Appellant - Food Inspector, took the sample of groundnut oil on 2.6.1983 at about 8.45 a.m. from the shop of respondent - accused No.1 Suresh Nathalal Parikh runs in the name and style of "Jignesh Provision Store" selling retail groundnut oils, which was purchased from accused No.2 "Agrawal Oil Depot", wholesale dealer of groundnut oil at Vadodara. After completing the formalities on the same day the complainant sent the sample of groundnut oil for analysis to the Public Analyst at Vadodara. The same was analysed on 10.6.1983 by the Public Analyst, Vadodara vide Report Ex.34 and signed on the same day and sent the same to the Food Inspector on the same day. On receiving the said Report of Public Analyst (Ex.34), the Food Inspector in a great hurry submitted his Report to the Local (Health) Authority i.e. Assistant Municipal Commissioner (G), Municipal Corporation, Vadodara, on the same day, for according his consent to prosecute accused (1) Suresh Nathalal Parikh, "Jignesh Provision Store", Vadodara and (2) "Agrawal Oil Depot" and partners, Vadodara. Along with his Report he had forwarded (i) Notice, (ii) Receipt, (iii) Panchnama and (iv) Public Analyst Report and other relevant papers as stated in his Report (Ex.35). More surprisingly the Sanctioning Authority i.e. Local (Health) Authority, without wasting even a minute filled typed sanctioned order in his own hand writing by simply writing the name of the complainant Shri G.Y.Ramekar and accused and forwarded it to the complainant on the same day i.e. on 10.6.1983. On receiving the same the complainant filed the complaint being Criminal Case No.4816/83 before the Court of

learned J.M.F.C. (Municipal), Vadodara, running into 5 typed pages, as if heaven was going to fall if there was a delay of even one day in filing the complaint. It is a unique case that after taking sample on 2.6.1983 the sample was sent on the same day and the Report of the Public Analyst was prepared within 8 days and on receiving the said Report the food Inspector immediately applied for the sanction with all the details and relevant papers to the Sanctioning Authority i.e. Local (Health) Authority and, as if the said Authority had no other work to do, gave sanction on the same day without application of mind by writing the names of the complainant and the accused in his own hand writing and forwarded the same on the same day to the complainant and the typed complaint running into 5 typed pages was kept ready and filed before the Court of learned Magistrate on the same day.

4. It has clearly come out in the evidence of complainant G.Y.Ramekar, Ex.18, that when he filed complaint he had not shown the name of the accused No.2 as "Agrawal Oil Depot" and its partners and he had not mentioned particular name of Anupkumar Agrawal. He does not know any other thing. In his Application marked 15 he had declared that no one is there as partner of Agrawal Oil Depot. He has also admitted that till he obtained consent from the Local (Health) Authority and filed complaint he was not knowing that who was the partners and owners of Agrawal Oil Depot. He has also admitted that he had not obtained licence under the provisions of Shop Establishment Act from the Corporation and not even verified who is partners or owners of Agrawal Oil Depot. He has also admitted that he had not personally gone to Local (Health) Authority along with papers for obtaining consent nor he had any discussion with Local (Health) Authority. He had simply forwarded the draft consent letter Ex.36 to the concerned Authority i.e. Local (Health) Authority through his Peon, on which the concerned Authority accorded its consent and sent it through the Peon on the same day. Specific question was put to him in his cross examination that all the relevant papers were sent by him along with his letter Ex.35 addressed to the Local (Health) Authority, which he was not able to state. He has also admitted in his letter Ex.35 addressed to the Local (Health) Authority for obtaining consent to prosecute the accused. He has not stated what was adulterated or that how the sample was sub-standard.

5. From the Report of Public Analyst Ex.34, which is reproduced by the learned Magistrate in his impugned

Judgment and order of acquittal, shows that the sample of groundnut oil was upto the standard, but as per his Report it was found that ground nut oil was adulterated and castor oil was added in the ground nut oil. If there was adulteration then the groundnut oil would not have been upto the standard as required under the Act and the Rules. All these questions have not at all been considered either by the complainant before asking for the consent or by the consenting Authority before according consent.

6. In such type of cases when the learned Magistrate acquitted the accused by giving benefit of doubt then certainly this Court would not like to interfere with such order of acquittal after lapse of about 20 years of commission of offence.

7. In view of the above discussion this Appeal fails and is dismissed.

sd/-

Date : February 05, 2003 (B.J.Shethna, J.)

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